

IN THE SUPREME COURT OF THE STATE OF DELAWARE

GARY L. STUART,	§
	§ No. 551, 2008
Defendant Below-	§
Appellant,	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 0606006590
	§
Plaintiff Below-	§
Appellee.	§

Submitted: March 3, 2009
Decided: March 17, 2009

Before **STEELE**, Chief Justice, **HOLLAND** and **BERGER**, Justices

ORDER

This 17th day of March 2009, upon consideration of the appellant's opening brief and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The defendant-appellant, Gary L. Stuart, filed an appeal from the Superior Court's October 7, 2008 order denying his motion for postconviction relief pursuant to Superior Court Criminal Rule 61. The plaintiff-appellee, the State of Delaware, has moved to affirm the Superior

Court's judgment on the ground that it is manifest on the face of the opening brief that the appeal is without merit.¹ We agree and AFFIRM.

(2) In June 2006, Stuart was indicted on the charge of Murder in the First Degree. In April 2007, pursuant to a plea bargain with the State, Stuart pleaded guilty to Murder in the Second Degree, thereby eliminating the risk that Stuart would be given the death penalty. Stuart was sentenced to 50 years incarceration at Level V, to be followed by 6 months at Level III probation. Stuart did not file a direct appeal.

(3) In this appeal from the Superior Court's denial of his postconviction motion, Stuart claims that his attorneys provided ineffective assistance by a) failing to discuss the prosecution's evidence with him; and b) promising him that he would receive no more than 20 years incarceration at Level V if he accepted the State's plea bargain. To the extent that Stuart has failed to argue other grounds to support his appeal that were previously raised, those grounds are deemed to be waived and will not be addressed by this Court.²

(4) The transcript of Stuart's plea colloquy, as well as his written guilty plea form, reflect that Stuart's attorneys had fully discussed his case

¹ Supr. Ct. R. 25(a).

² *Murphy v. State*, 632 A.2d 1150, 1152 (Del. 1993). In his motion for postconviction relief filed in the Superior Court, Stuart also argued that the indictment was defective and the Superior Court improperly failed to advise him during his plea colloquy of the maximum penalty he could receive.

with him and that Stuart was satisfied with his attorneys' representation. Stuart stated on his guilty plea form that the written plea agreement constituted his entire agreement with the State and that no one had promised him what his sentence would be. In his plea colloquy, Stuart also stated that he understood he could be sentenced to as much as life imprisonment on the second degree murder conviction. In the absence of clear and convincing evidence to the contrary, Stuart is bound by those representations.³ Moreover, there is no evidence that, but for coercion on the part of Stuart's counsel, he would not have pleaded guilty but would have insisted on proceeding to trial.⁴ Stuart's guilty plea provided him with a clear benefit. In the absence of any evidence of error or coercion on the part of Stuart's counsel, we conclude that his claims of ineffective assistance of counsel are without merit.

(5) It is manifest on the face of the opening brief that this appeal is without merit because the issues presented on appeal are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, there was no abuse of discretion.

³ *Somerville v. State*, 703 A.2d 629, 632 (Del. 1997).

⁴ *Albury v. State*, 551 A.2d 53, 60 (Del. 1988).

NOW, THEREFORE, IT IS ORDERED that the State of Delaware's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Randy J. Holland
Justice